

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ADJUSTACAM LLC,

Plaintiff,

v.

Case No: 6:10-CV-329-LED

AMAZON.COM, INC.;  
AUDITEK CORPORATION;  
BALTIC LATVIAN UNIVERSAL  
ELECTRONICS, LLC D/B/A BLUE  
MICROPHONES, LLC D/B/A BLUE  
MICROPHONE;  
BLUE MICROPHONES, LLC;  
CDW CORPORATION F/K/A CDW  
COMPUTER CENTERS, INC.;  
CDW, INC.;  
COBRA DIGITAL, LLC;  
COMPUSA.COM, INC.;  
CREATIVE TECHNOLOGY LTD.;  
CREATIVE LABS, INC.;  
DELL, INC.;  
DIGITAL INNOVATIONS, LLC;  
EASTMAN KODAK COMPANY;  
EZONICS CORPORATION D/B/A EZONICS  
CORPORATION USA D/B/A EZONICS;  
FRY'S ELECTRONICS, INC.;  
GEAR HEAD, LLC;  
HEWLETT-PACKARD COMPANY;  
INTCOMEX, INC.;  
JASCO PRODUCTS COMPANY LLC D/B/A  
JASCO PRODUCTS COMPANY D/B/A  
JASCO;  
JWIN ELECTRONICS CORPORATION;  
KLIP XTREME LLC;  
KMART CORPORATION;  
LIFEWORX TECHNOLOGY GROUP, LLC;  
MACALLY PERIPHERALS, INC. D/B/A  
MACALLY U.S.A;  
MACE GROUP, INC.;  
MICRO ELECTRONICS, INC. DBA MICRO,  
CENTER;

NEW COMPUSA CORPORATION; )  
NEWEGG, INC.; )  
NEWEGG.COM, INC.; )  
OFFICE DEPOT, INC.; )  
OVERSTOCK.COM, INC.; )  
PHOEBE MICRO INC.; )  
PROLYNKZ, LLC; )  
RADIOSHACK CORPORATION; )  
ROSEWILL INC.; )  
SEARS BRANDS, LLC; )  
SEARS HOLDINGS CORPORATION D/B/A )  
SEARS )  
SEARS, ROEBUCK AND COMPANY; )  
SAKAR INTERNATIONAL, INC.; )  
SAKAR, INC.; )  
SDI TECHNOLOGIES, INC.; )  
SOFTWARE BROKERS OF AMERICA INC. )  
DBA INTCOMEX CORPORATION D/B/A )  
INTCOMEX; )  
SYSTEMAX, INC. D/B/A COMPUSA; )  
TARGET CORP.; )  
TIGERDIRECT, INC.; )  
TRIPPE MANUFACTURING COMPANY )  
D/B/A TRIPP LITE; )  
WAL-MART STORES, INC., )  
BEST BUY CO., INC. D/B/A BEST BUY )  
D/B/A ROCKETFISH; )  
BEST BUY STORES, LP; )  
BESTBUY.COM, LLC; )  
CONN'S, INC. D/B/A CONN'S; )  
J&R ELECTRONICS, INC. D/B/A J&R; )  
KOHL'S CORPORATION D/B/A KOHL'S; )  
KOHL'S ILLINOIS, INC.; )  
SOLID YEAR CO., LTD AND )  
WALGREEN CO. D/B/A WALGREENS )  
Defendants. )

**DEFENDANTS COMPUSA.COM, INC.'S, NEW COMPUSA  
CORP.'S, SYSTEMAX INC.'S AND TIGERDIRECT, INC.'S NOTICE OF  
JOINDER IN DEFENDANT DELL INC.'S CORRECTED MOTION TO  
DISMISS PLAINTIFF'S ALLEGATIONS OF INDIRECT INFRINGEMENT  
AND WILLFULL INFRINGEMENT FOR FAILURE TO STATE A CLAIM**

Defendants CompUSA.com, Inc., New CompUSA Corp., Systemax Inc. and TigerDirect, Inc. (collectively, the “Systemax defendants”) join defendant Dell Inc.’s corrected motion to dismiss plaintiff’s allegations of indirect infringement and willful infringement for failure to state a claim (docket no. 164) and the associated notice of additional authority regarding defendant Dell Inc.’s corrected motion to dismiss (docket no. 180) and the arguments and authorities found therein.

Plaintiff AdjustaCam LCC (“Adjustacam”) asserts allegations of indirect infringement against the Systemax defendants that are substantively the same as those it asserts against defendant Dell, Inc. (“Dell”). These allegations are deficient for the same reasons set forth in Dell’s motion to dismiss. *Compare*, First Amended Complaint for Patent Infringement (docket no. 111) ¶¶ 84 and 88 (allegations against Systemax defendants) with ¶ 92 (allegations against Dell); *see also, id.* at ¶ 224 (allegations against all defendants). Because AdjustaCam did not adequately plead the required facts to support an allegation that the Systemax defendants *indirectly* or *willfully* infringed the patent-in-suit, its indirect infringement and willful infringement claims against the Systemax defendants should be dismissed.

Although the Systemax defendants filed an answer to plaintiff’s first amended complaint on September 10, 2010 (Docket No. 179), there is authority to support a post-answer motion to dismiss as properly before the Court where the movant raised the defense of failure to state a claim in his or her answer. *Dellhomme v. Caremark RX, Inc.*, 232 F.R.D. 573, 575-576 (N.D. Tex. 2005); *Gerakaris v. Champagne*, 913 F. Supp. 646, 650-651 (D. Mass. 1996). The Systemax defendants raised the defense of failure to state a claim in their answer. (Docket no. 179, ¶ 230).

Alternatively, this Court may convert this joinder, even *sua sponte*, into a motion on the pleadings or a motion for summary judgment pursuant to Fed. R. Civ. P. 12(c) and (d). *Langley v. Napolitano*, 677 F.Supp.2d 261, 263 (D.D.C. 2010); *In re Enron Corp. Securities Derivative & "ERISA" Litigation*, 439 F.Supp.2d 692, 695-696 (S.D. Tex. 2006).

Based on the foregoing, the Systemax defendants respectfully request that all allegations of indirect and willful infringement against the Systemax defendants be dismissed with prejudice.

Respectfully submitted,

**DAVIDOFF MALITO & HUTCHER LLP**  
*Attorneys for Defendants Systemax, Inc.,  
CompUSA.com, Inc., New CompUSA Corporation,  
and TigerDirect, Inc.*

Dated: October 14, 2010

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, the within was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

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/s/ David W. Denenberg  
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